



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** American Imaging Services, Inc.--Request for  
Declaration of Entitlement to Costs

**File:** B-246124.3

**Date:** February 28, 1992

Ronald G. Robey, Esq., and John E. Menechino, Jr., Esq.,  
Smith, Currie & Hancock, for the protester.  
Anne B. Perry, Esq., and Paul Lieberman, Esq., Office of the  
General Counsel, GAO, participated in the preparation of the  
decision.

### DIGEST

Protester is not entitled to award of proposal preparation costs or the costs of filing and pursuing its protest where the agency canceled the solicitation at issue for reasons unrelated to the protest allegations.

### DECISION

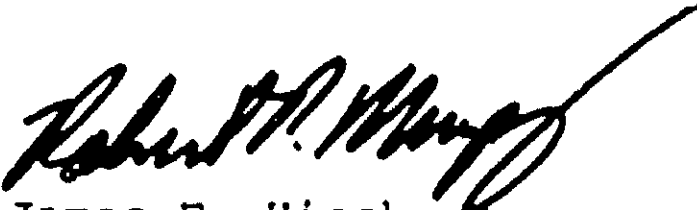
American Imaging Service, Inc. (AISI) requests that our Office declare it entitled to recover proposal preparation costs and the reasonable costs of filing and pursuing its protest. On October 7, 1991, American Imaging protested the application of the small disadvantaged business preference under request for proposals (RFP) No. F41636-91-R-0168, issued by the Department of the Air Force. On October 31, the agency notified our Office that for reasons independent of the protest allegation, it was canceling the solicitation and requested that we dismiss the protest. Since the cancellation rendered the protest academic, we dismissed the protest on November 13.

AISI has filed a request under section 21.6(e) of our revised Bid Protest Regulations, 56 Fed. Reg. 3759 (1991), (to be codified at 4 C.F.R. § 21.6(e)), for a declaration of entitlement to the costs of filing and pursuing its protest. Pursuant to the revised regulations, if the contracting agency decides to take corrective action in response to a protest, we may declare the protester to be entitled to recover reasonable costs of filing and pursuing its protest, including attorneys' fees. In other words, we may award costs in circumstances where the record shows that the agency had acted in violation of statute or regulation and

only took corrective action in response to the protest. See Building Servs. Unlimited, Inc.--Claim for Costs, B-243735.3, Aug. 27, 1991, 91-2 CPD ¶ 200.

Here, as the protester concedes, the agency did not take corrective action. Rather, the agency canceled the solicitation because of its determination that its needs had changed and would be better served by issuing blanket purchase agreements.<sup>1</sup> In these circumstances, where the agency did not take corrective action in response to a clearly meritorious protest, the award of protest costs is not warranted under section 21.6(e) of our Bid Protest Regulations. Id.

The request for a declaration of entitlement to costs is denied.

  
for James F. Hinchman  
General Counsel

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<sup>1</sup>AISI also has protested the cancellation and issuance of blanket purchase agreements, and this protest will be addressed in a future decision by our Office.